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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/995,424 | 11/27/2001 | Donald Joseph Dermody JR. | DD01-001 | 9760 |

7590
Billy J. Knowles
72 Hurley Ave.
Kingston, NY 12401

09/17/2003

EXAMINER

WILSON, LEE D

| ART UNIT | PAPER NUMBER |
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3723

DATE MAILED: 09/17/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,424

Applicant(s)

DERMODY, DONALD JOSEPH

Examiner

LEE D WILSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-27 and 29-41 is/are rejected.
- 7) ☒ Claim(s) 14, 28 and 42 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7-11, 13, 15-19, 21-25, 27, 29-33, 35-39, and 41, are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura (5244194).

Nishimura discloses a compound jaw having a primary member (13), a first secondary jaw member (11) with a cutting template (which the top flat surface), a second secondary jaw member (11"), first type of fastener (11c1)

In regard to claims 5, 19, 26, and 33, the torque applied to the screw greater than approximately 250 in/lbs because there is nothing stopping anyone from fastening the screw on with that force or any force useable to attach a fastener.

In regard to claims 29-33 and 35-39, The method is merely the natural operation of claimed invention.

3. Claims 1-4, 7-11, 13, 15-19, 21-25, 27, 29-33, 35-39, and 41, are rejected under 35 U.S.C. 102(b) as being anticipated by Durfee (5150888).

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Durfee Jr. discloses a compound jaw having a primary member (20), a first secondary jaw member (21) with a cutting template (which the top flat surface), a second secondary jaw member (422&21 a and b), and first type of fastener (23).

In regard to claims 5, 19, 26, and 33, the torque applied to the screw greater than approximately 250 in/lbs because there is nothing stopping anyone from fastening the screw on with that force or any force useable to attach a fastener.

In regard to claims 29-33 and 35-39, The method is merely the natural operation of claimed invention.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6, 12, 20, 26, 34, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Nishimura (5244194).

a. Nishimura is discussed above.

b. Nishimura discloses the claimed invention except for ½ x 13 cap screws. It would have been an obvious matter of design choice to ½ x 13 cap screws and 1/4 x 20 cap screws, since such a modification would have involved a mere change in the size of a component. A change in

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size generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

c. In regard to claims 34 and 40, The method is merely the natural operation of claimed invention.

6. Claims 6, 12, 20, 26, 34, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Durfee (5150888).

a. Durfee is discussed above.

b. Durfee discloses the claimed invention except for $\frac{1}{2}$ x 13 cap screws. It would have been an obvious matter of design choice to $\frac{1}{2}$ x 13 cap screws and $\frac{1}{4}$ x 20 cap screws, since such a modification would have involved a mere change in the size of a component. A change in size generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

c. In regard to claims 34 and 40, The method is merely the natural operation of claimed invention.

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Allowable Subject Matter

7. Claims 14, 28, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Snell and Hintze disclose a device.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lee Wilson whose telephone number is (703) 305-4094.

ldw

September 9, 2003



LEE D. WILSON
PRIMARY EXAMINER